

TRIBAL GAMING COMPACTS. EXCLUSIVE GAMING RIGHTS. CONTRIBUTIONS TO STATE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State. Initiative Constitutional Amendment and Statute.

- Upon request by federally-recognized Indian tribe, Governor must execute renewable 99-year gaming compact.
- Grants exclusive tribal gaming rights; no limits on number of machines, facilities, types of games on Indian land.
- Tribes contribute percentage of net gaming income, based on prevailing state corporate tax rate, to state fund.
- Contributions cease if non-tribal casino-type gaming is permitted.
- Contributions are in lieu of any other fees, taxes, levies.
- Requires off-reservation impact assessments, public notice/comment opportunities before significant expansion or construction of gaming facilities.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown effect on payments to the state from Indian tribes. The potential increase or decrease in these payments could be in the tens of millions to over a hundred million dollars annually.
- Likely reduction in tribal payments to local governments, potentially totaling in the millions of dollars annually.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Indian Tribes in California. Under federal law, Indian tribes in California are considered sovereign nations. As a result, tribes are not required to pay most federal, state, or local taxes (such as income, property, or sales tax). In addition, tribes are largely exempt from state laws, including California environmental and workplace laws.

Gambling on Tribal Lands. Federal law and the State Constitution allow tribes to conduct gambling on Indian land if they enter into agreements with the state. These agreements, called compacts, lay out the conditions under which the gambling may occur. Under current compacts, tribes may operate slot machines and card games, such as twenty-one. Other Nevada-style casino games such as craps and roulette are prohibited. Currently, 64 tribes have compacts and operate 53 casinos with a total of more than 54,000 slot machines.

1999 Compacts. Most tribes signed their current compacts in 1999. Under these compacts, a tribe may operate up to two facilities and up to a total of 2,000 slot machines. In exchange, tribes make some payments to the state which can only be used for specified purposes (such as for making payments to tribes that either do not operate slot machines or operate fewer than 350 machines). These payments total over \$100 million annually. Under these compacts, tribes are required to prepare an environmental study analyzing the impact on the surrounding area of any new or expanded gambling facility. These compacts will expire in 2020.

2004 Compacts. In the summer of 2004, five tribes signed amendments to their 1999 compacts, and these revised

agreements were approved by the state. Under these new agreements, these tribes may operate as many slot machines as they desire. In exchange, these tribes make a specified payment annually to the state, with additional payments for each slot machine added to their facilities. Payments to the state from these revised compacts are expected to total in the low hundreds of millions of dollars annually. Unlike the payments required by the 1999 compacts, the state can use these payments for any purpose. The newer compacts also require the tribes to (1) prepare more detailed environmental studies, (2) negotiate with local governments regarding payments addressing the impacts of new gambling facilities on the local communities, and (3) follow other provisions related to patron disputes, building codes, and labor relations. These new agreements expire in 2030, ten years later than the 1999 compacts.

PROPOSAL

This measure amends the State Constitution and state statutes to require the Governor to amend an existing compact or enter into a new compact with any tribe within 30 days of a tribe's request. Any such compact would have to include certain provisions, as discussed below.

Gambling Revenues. Under the provisions of the measure, a tribe entering into an amended or new compact would pay the state a percentage of its net income from gambling activities. The percentage of net income paid would be equivalent to the corporate tax rate paid by a private business (currently 8.84 percent). The measure specifies that the state could spend these revenues for any purpose. In the event that the tribes lose their exclusive right

TRIBAL GAMING COMPACTS.
EXCLUSIVE GAMING RIGHTS. CONTRIBUTIONS TO STATE.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

PROP

70

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

to conduct certain types of gambling in California, the tribes would no longer be required to make these payments to the state. These payments generally would be in place of any other state or local government fees, taxes, or levies on gambling activities. (Tribes, however, would still be required to make the specific payments required under the 1999 compacts.)

Expansion of Gambling. The measure expands the types of games authorized by the compacts to include roulette, craps, and any other form of casino gambling. The measure eliminates the 1999 compact limit on the number of slot machines and facilities a tribe can operate on Indian lands.

Compacts Extended. The measure specifies that any amended or new compact would remain in effect for 99 years. These compacts could be amended or renewed upon agreement of the Governor and a tribe and approval by the federal government.

Environmental Studies. As required under the 1999 compacts, any tribe entering a compact under this measure would be required to prepare an environmental study analyzing the impact on the surrounding area of any new or expanded tribal gambling facility.

Related Provisions in Proposition 68. Proposition 68 on this ballot also contains provisions affecting the number of slot machines authorized in the state. That measure would allow specified card rooms and racetracks to operate slot machines if tribes do not agree to make specified payments to the state and abide by certain state laws. The State Constitution provides that if the provisions of two approved propositions are in conflict, only the provisions of the measure with the higher number of yes votes at the statewide election take effect.

FISCAL EFFECT

Background. Over time, it is likely that additional tribes will seek amendments to their compacts similar to those agreed to by five tribes earlier this year. These amendments would allow tribes to exceed their current limit of 2,000 slot machines. As a result, over the next few years (absent any other changes), the state would likely experience:

- Increased slot machines operated on Indian lands in the thousands.
- Increased state revenues in the hundreds of millions of dollars annually.
- Increased payments to local governments to address the impacts of gambling on communities in the millions of dollars annually.

Changes Under the Measure. In comparison to the existing compacts, the compacts authorized under this measure would generally offer tribes the following:

- **More Games.** Like the 2004 compacts, this measure's compacts would not restrict the number of allowable slot machines. In addition, this measure would allow tribes to offer additional casino games, like craps and roulette.

- **Likely Lower Payments.** Rather than the per machine payments to the state required under the 2004 compacts, this measure's payments would be based on the income generated by the machines (and other games). The amount of payments received by the state, therefore, would vary among tribes, depending on their gambling operations. Consequently, it is difficult to determine the exact amount that would be paid to the state. We have reviewed the payments required by the 2004 compacts and those required under this measure. For any given level of tribal gambling activity, the payments to the state would tend to be lower under this measure.

- **Fewer Regulations.** Tribes under this measure would not be subject to several provisions in the 2004 compacts, such as the requirements for more extensive environmental reviews and negotiations with local governments.

- **Longer Length.** Under the measure, tribes' compacts would last 99 years. This would provide tribes with greater long-term stability for their gambling operations.

Given these provisions compared to existing compacts, we would expect many tribes to request amendments under this measure. In this case, tribes would be able to add additional slot machines and other games to their operations. Consequently, tribal gambling across the state under this measure would likely be higher than otherwise would have been the case.

Estimated Gambling Revenues. Although the measure could lead to an increase in overall gambling in the state, it is unclear what impact that would have on payments to the state. This is because, as noted above, the payments for any given level of gambling activity would tend to be lower than under current law. If the increase in gambling income were to more than offset the lower payments, the state would experience an increase in annual payments. On the other hand, if the increase in gambling income did not offset the lower payments, the state would experience a reduction in annual payments.

The change in revenues from current law would depend on a variety of factors including (1) the extent to which tribes agreed to the measure's provisions, (2) the extent to which new slot machines and games were added at gambling establishments, (3) the income generated from gambling, and (4) how the state enforced the collection of required payments based on the net income of each tribe. The change in payments—whether an increase or decrease—could be in the tens of millions to over a hundred million dollars annually.

Payments to Local Governments. To the extent that tribes opted to accept this measure's provisions rather than those of the 2004 compacts, they would not be subject to the requirement for negotiations with local governments concerning community impacts. As a result, local governments would likely receive less in payments from tribes. The amount of any such reduction is unknown but would likely be in the millions of dollars annually.